

FILED**FOR PUBLICATION**

SEP 21 2012

UNITED STATES COURT OF APPEALSMOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**FOR THE NINTH CIRCUIT**

**MATTHEW C. KILGORE, individually
and on behalf of all others similarly
situated; WILLIAM BRUCE FULLER,
individually and on behalf of all others
similarly situated,**

Plaintiffs - Appellees,

v.

**KEYBANK, NATIONAL
ASSOCIATION, successor in interest to
KeyBank USA, N.A.; KEY
EDUCATION RESOURCES, a division
of KeyBank National Association;
GREAT LAKES EDUCATION LOAN
SERVICES, INC., a Wisconsin
corporation,**

Defendants - Appellants.

No. 09-16703

D.C. No. 3:08-cv-02958-TEH

ORDER

**MATTHEW C. KILGORE, individually
and on behalf of all others similarly
situated; WILLIAM BRUCE FULLER,
individually and on behalf of all others
similarly situated,**

Plaintiffs - Appellants,

v.

**KEYBANK, NATIONAL
ASSOCIATION, successor in interest to
KeyBank USA, N.A.; KEY
EDUCATION RESOURCES, a division
of KeyBank National Association;
GREAT LAKES EDUCATION LOAN
SERVICES, INC., a Wisconsin
corporation,**

Defendants - Appellees.

No. 10-15934

D.C. No. 3:08-cv-02958-TEH

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Ninth Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.